

By: Representative Bain

To: Judiciary B

HOUSE BILL NO. 270

1 AN ACT TO CREATE "THE BULLYING DETERRENT ACT"; TO AMEND
 2 SECTION 37-11-67, MISSISSIPPI CODE OF 1972, TO EXPAND THE
 3 DEFINITION OF BULLYING TO INCLUDE ACTS THAT CAUSE OTHERS TO HARM
 4 THEMSELVES; TO PROVIDE THAT FAILURE OF A SCHOOL EMPLOYEE TO REPORT
 5 BULLYING MAY RESULT IN THE TERMINATION OF SUCH EMPLOYEE; TO AMEND
 6 SECTION 37-11-69, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A
 7 SCHOOL, SCHOOL DISTRICT AND ANY PERSON WHO FAILS TO REPORT
 8 BULLYING AS REQUIRED BY LAW MAY BE HELD CIVILLY LIABLE FOR ANY
 9 DAMAGES RELATING FROM SUCH FAILURE; TO AMEND SECTIONS 37-3-101 AND
 10 37-3-103, MISSISSIPPI CODE OF 1972, TO INCLUDE BULLYING IN SUICIDE
 11 PREVENTION EDUCATION; TO AMEND SECTION 97-3-7, MISSISSIPPI CODE OF
 12 1972, TO INCLUDE BULLYING IN THE CRIMINAL PROVISION FOR SIMPLE
 13 ASSAULT; AND FOR RELATED PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

15 **SECTION 1.** This act shall be known and may be cited as "The
 16 Bullying Deterrent Act."

17 **SECTION 2.** Section 37-11-67, Mississippi Code of 1972, is
 18 amended as follows:

19 37-11-67. (1) As used in this section, "bullying or
 20 harassing behavior" is any pattern of gestures or written,
 21 electronic or verbal communications, or any physical act or any
 22 threatening communication, or any act reasonably perceived as
 23 being motivated by any actual or perceived differentiating



24 characteristic, that takes place on school property, at any
25 school-sponsored function, or on a school bus, and that:

26 (a) Places a student or school employee in actual and
27 reasonable fear of harm to his or her person or damage to his or
28 her property; or

29 (b) Creates or is certain to create a hostile
30 environment by substantially interfering with or impairing a
31 student's educational performance, opportunities or benefits. For
32 purposes of this section, "hostile environment" means that the
33 victim subjectively views the conduct as bullying or harassing
34 behavior and the conduct is objectively severe or pervasive enough
35 that a reasonable person would agree that it is bullying or
36 harassing behavior.

37 (2) No student or school employee shall be subjected to
38 bullying or harassing behavior by school employees or students.

39 (3) No person shall engage in any act of reprisal or
40 retaliation against a victim, witness or a person with reliable
41 information about an act of bullying or harassing behavior.

42 (4) A school employee who has witnessed or has reliable
43 information that a student or school employee has been subject to
44 any act of bullying or harassing behavior shall report the
45 incident to the appropriate school official. Failure to report
46 such information may result in the termination of the school
47 employee.



48 (5) A student or volunteer who has witnessed or has reliable
49 information that a student or school employee has been subject to
50 any act of bullying or harassing behavior should report the
51 incident to the appropriate school official.

52 (6) Conduct described in subsection (1) of this section is
53 considered bullying if that conduct interferes with a student's
54 education, * * * substantially disrupts the operation of a school,
55 causes a student to feel threatened, causes a student to harm
56 himself or herself, causes a student to attempt to harm himself or
57 herself or creates a hostile environment.

58 **SECTION 3.** Section 37-11-69, Mississippi Code of 1972, is
59 amended as follows:

60 37-11-69. (1) Each local school district shall include in
61 its personnel policies, discipline policies and code of student
62 conduct a prohibition against bullying or harassing behavior and
63 adopt procedures for reporting, investigating and addressing such
64 behavior, that:

65 (a) Prohibit the bullying of a student;

66 (b) Prohibit retaliation against any person, including
67 a victim, a witness, or another person, who in good faith provides
68 information concerning an incident of bullying;

69 (c) Establish a procedure for providing notice of an
70 incident of bullying to a parent or guardian of the victim and a
71 parent or guardian of the bully within a reasonable amount of time
72 after the incident;



73 (d) Establish the actions a student should take to
74 obtain assistance and intervention in response to bullying;

75 (e) Set out the available counseling options for a
76 student who is a victim of or a witness to bullying or who engages
77 in bullying;

78 (f) Establish procedures for reporting an incident of
79 bullying, investigating a reported incident of bullying and
80 determining whether the reported incident of bullying occurred;

81 (g) Prohibit the imposition of a disciplinary measure
82 on a student who, after an investigation, is found to be a victim
83 of bullying, on the basis of that student's use of reasonable
84 self-defense in response to the bullying; and

85 (h) Require that discipline for bullying of a student
86 with disabilities comply with applicable requirements under
87 federal law, including the Individuals with Disabilities Education
88 Act (20 USCS Section 1400 et seq.).

89 (2) The policies must recognize the fundamental right of
90 every student to take reasonable actions as may be necessary to
91 defend himself or herself from an attack by another student who
92 has evidenced menacing or threatening behavior through bullying or
93 harassing.

94 (3) The procedure for reporting bullying established under
95 subsection (1) of this section must be posted on the district's
96 Internet website.



97 (4) A school, school district and any person who fails to
98 report bullying as provided under this section may be held civilly
99 liable for any damages relating to the failure to report, if the
100 failure to report is the proximate cause of a student causing harm
101 to himself or herself or attempting to cause harm to himself or
102 herself.

103 **SECTION 4.** Section 37-3-101, Mississippi Code of 1972, is
104 amended as follows:

105 37-3-101. (1) Each local school district shall adopt a
106 policy on student suicide prevention. The policies shall be
107 developed in consultation with school and community stakeholders,
108 school-employed mental health professions, and suicide prevention
109 experts, and shall, at a minimum, address procedures relating to
110 suicide and bullying prevention, intervention and postvention. To
111 assist districts in developing policies for student suicide
112 prevention, the State Department of Education shall establish a
113 model policy in consultation with the Mississippi Department of
114 Mental Health for use by local school districts in accordance with
115 this section.

116 (2) In the 2017-2018 school year, the State Department of
117 Education shall require that local school districts conduct
118 in-service training on suicide and bullying prevention education
119 for all school district employees. The Mississippi Department of
120 Mental Health will be responsible for development of the content



121 of the training. This education may be accomplished through
122 self-review of and bullying suitable suicide prevention materials.

123 **SECTION 5.** Section 37-3-103, Mississippi Code of 1972, is
124 amended as follows:

125 37-3-103. * * * The State Department of Education shall
126 require that local school districts conduct in-service training on
127 suicide prevention and bullying education for all newly employed
128 school district employees. The Mississippi Department of Mental
129 Health will be responsible for development of the content of the
130 training. This education may be accomplished through self-review
131 of suitable suicide prevention materials.

132 **SECTION 6.** Section 97-3-7, Mississippi Code of 1972, is
133 amended as follows:

134 97-3-7. (1) (a) A person is guilty of simple assault if he
135 (i) attempts to cause or purposely, knowingly or recklessly causes
136 bodily injury to another; (ii) negligently causes bodily injury to
137 another with a deadly weapon or other means likely to produce
138 death or serious bodily harm; or (iii) attempts by physical menace
139 to put another in fear of imminent serious bodily harm, including
140 bullying as defined in Section 37-11-67; and, upon conviction, he
141 shall be punished by a fine of not more than Five Hundred Dollars
142 (\$500.00) or by imprisonment in the county jail for not more than
143 six (6) months, or both.

144 (b) However, a person convicted of simple assault upon
145 any of the persons listed in subsection (14) of this section under



146 the circumstances enumerated in subsection (14) shall be punished
147 by a fine of not more than One Thousand Dollars (\$1,000.00) or by
148 imprisonment for not more than five (5) years, or both.

149 (2) (a) A person is guilty of aggravated assault if he (i)
150 attempts to cause serious bodily injury to another, or causes such
151 injury purposely, knowingly or recklessly under circumstances
152 manifesting extreme indifference to the value of human life; (ii)
153 attempts to cause or purposely or knowingly causes bodily injury
154 to another with a deadly weapon or other means likely to produce
155 death or serious bodily harm; or (iii) causes any injury to a
156 child who is in the process of boarding or exiting a school bus in
157 the course of a violation of Section 63-3-615; and, upon
158 conviction, he shall be punished by imprisonment in the county
159 jail for not more than one (1) year or in the Penitentiary for not
160 more than twenty (20) years.

161 (b) However, a person convicted of aggravated assault
162 upon any of the persons listed in subsection (14) of this section
163 under the circumstances enumerated in subsection (14) shall be
164 punished by a fine of not more than Five Thousand Dollars
165 (\$5,000.00) or by imprisonment for not more than thirty (30)
166 years, or both.

167 (3) (a) When the offense is committed against a current or
168 former spouse of the defendant or a child of that person, a person
169 living as a spouse or who formerly lived as a spouse with the
170 defendant or a child of that person, a parent, grandparent, child,



171 grandchild or someone similarly situated to the defendant, a
172 person who has a current or former dating relationship with the
173 defendant, or a person with whom the defendant has had a
174 biological or legally adopted child, a person is guilty of simple
175 domestic violence who:

176 (i) Attempts to cause or purposely, knowingly or
177 recklessly causes bodily injury to another;

178 (ii) Negligently causes bodily injury to another
179 with a deadly weapon or other means likely to produce death or
180 serious bodily harm; or

181 (iii) Attempts by physical menace to put another
182 in fear of imminent serious bodily harm.

183 Upon conviction, the defendant shall be punished by a fine of
184 not more than Five Hundred Dollars (\$500.00) or by imprisonment in
185 the county jail for not more than six (6) months, or both.

186 (b) **Simple domestic violence: third.** A person is
187 guilty of the felony of simple domestic violence third who commits
188 simple domestic violence as defined in this subsection (3) and
189 who, at the time of the commission of the offense in question, has
190 two (2) prior convictions, whether against the same or another
191 victim, within seven (7) years, for any combination of simple
192 domestic violence under this subsection (3) or aggravated domestic
193 violence as defined in subsection (4) of this section or
194 substantially similar offenses under the law of another state, of
195 the United States, or of a federally recognized Native American



196 tribe. Upon conviction, the defendant shall be sentenced to a
197 term of imprisonment not less than five (5) nor more than ten (10)
198 years.

199 (4) (a) When the offense is committed against a current or
200 former spouse of the defendant or a child of that person, a person
201 living as a spouse or who formerly lived as a spouse with the
202 defendant or a child of that person, a parent, grandparent, child,
203 grandchild or someone similarly situated to the defendant, a
204 person who has a current or former dating relationship with the
205 defendant, or a person with whom the defendant has had a
206 biological or legally adopted child, a person is guilty of
207 aggravated domestic violence who:

208 (i) Attempts to cause serious bodily injury to
209 another, or causes such an injury purposely, knowingly or
210 recklessly under circumstances manifesting extreme indifference to
211 the value of human life;

212 (ii) Attempts to cause or purposely or knowingly
213 causes bodily injury to another with a deadly weapon or other
214 means likely to produce death or serious bodily harm; or

215 (iii) Strangles, or attempts to strangle another.

216 Upon conviction, the defendant shall be punished by
217 imprisonment in the custody of the Department of Corrections for
218 not less than two (2) nor more than twenty (20) years.

219 (b) **Aggravated domestic violence; third.** A person is
220 guilty of aggravated domestic violence third who, at the time of



221 the commission of that offense, commits aggravated domestic
222 violence as defined in this subsection (4) and who has two (2)
223 prior convictions within the past seven (7) years, whether against
224 the same or another victim, for any combination of aggravated
225 domestic violence under this subsection (4) or simple domestic
226 violence third as defined in subsection (3) of this section, or
227 substantially similar offenses under the laws of another state, of
228 the United States, or of a federally recognized Native American
229 tribe. Upon conviction for aggravated domestic violence third,
230 the defendant shall be sentenced to a term of imprisonment of not
231 less than ten (10) nor more than twenty (20) years.

232 (5) **Sentencing for fourth or subsequent domestic violence**
233 **offense.** Any person who commits an offense defined in subsection
234 (3) or (4) of this section, and who, at the time of the commission
235 of that offense, has at least three (3) previous convictions,
236 whether against the same or different victims, for any combination
237 of offenses defined in subsections (3) and (4) of this section or
238 substantially similar offenses under the law of another state, of
239 the United States, or of a federally recognized Native American
240 tribe, shall, upon conviction, be sentenced to imprisonment for
241 not less than fifteen (15) years nor more than twenty (20) years.

242 (6) In sentencing under subsections (3), (4) and (5) of this
243 section, the court shall consider as an aggravating factor whether
244 the crime was committed in the physical presence or hearing of a
245 child under sixteen (16) years of age who was, at the time of the



246 offense, living within either the residence of the victim, the
247 residence of the perpetrator, or the residence where the offense
248 occurred.

249 (7) Reasonable discipline of a child, such as spanking, is
250 not an offense under subsections (3) and (4) of this section.

251 (8) A person convicted under subsection (4) or (5) of this
252 section shall not be eligible for parole under the provisions of
253 Section 47-7-3(1)(c) until he shall have served one (1) year of
254 his sentence.

255 (9) For the purposes of this section:

256 (a) "Strangle" means to restrict the flow of oxygen or
257 blood by intentionally applying pressure on the neck, throat or
258 chest of another person by any means or to intentionally block the
259 nose or mouth of another person by any means.

260 (b) "Dating relationship" means a social relationship
261 as defined in Section 93-21-3.

262 (10) Every conviction under subsection (3), (4) or (5) of
263 this section may require as a condition of any suspended sentence
264 that the defendant participate in counseling or treatment to bring
265 about the cessation of domestic abuse. The defendant may be
266 required to pay all or part of the cost of the counseling or
267 treatment, in the discretion of the court.

268 (11) (a) Upon conviction under subsection (3), (4) or (5)
269 of this section, the court shall be empowered to issue a criminal
270 protection order prohibiting the defendant from any contact with



271 the victim. The court may include in a criminal protection order
272 any other condition available under Section 93-21-15. The
273 duration of a criminal protection order shall be based upon the
274 seriousness of the facts before the court, the probability of
275 future violations, and the continued safety of the victim or
276 another person. However, municipal and justice courts may issue
277 criminal protection orders for a maximum period of time not to
278 exceed one (1) year. Circuit and county courts may issue a
279 criminal protection order for any period of time deemed necessary.
280 Upon issuance of a criminal protection order, the clerk of the
281 issuing court shall enter the order in the Mississippi Protection
282 Order Registry within twenty-four (24) hours of issuance with no
283 exceptions for weekends or holidays, pursuant to Section 93-21-25.

284 (b) A criminal protection order shall not be issued
285 against the defendant if the victim of the offense, or the
286 victim's lawful representative where the victim is a minor or
287 incompetent person, objects to its issuance, except in
288 circumstances where the court, in its discretion, finds that a
289 criminal protection order is necessary for the safety and
290 well-being of a victim who is a minor child or incompetent adult.

291 (c) Criminal protection orders shall be issued on the
292 standardized form developed by the Office of the Attorney General
293 and a copy provided to both the victim and the defendant.

294 (d) It shall be a misdemeanor to knowingly violate any
295 condition of a criminal protection order. Upon conviction for a



296 violation, the defendant shall be punished by a fine of not more
297 than Five Hundred Dollars (\$500.00) or by imprisonment in the
298 county jail for not more than six (6) months, or both.

299 (12) When investigating allegations of a violation of
300 subsection (3), (4), (5) or (11) of this section, whether or not
301 an arrest results, law enforcement officers shall utilize the form
302 prescribed for such purposes by the Office of the Attorney General
303 in consultation with the sheriff's and police chief's
304 associations. However, failure of law enforcement to utilize the
305 uniform offense report shall not be a defense to a crime charged
306 under this section. The uniform offense report shall not be
307 required if, upon investigation, the offense does not involve
308 persons in the relationships specified in subsections (3) and (4)
309 of this section.

310 (13) In any conviction under subsection (3), (4), (5) or
311 (11) of this section, the sentencing order shall include the
312 designation "domestic violence." The court clerk shall enter the
313 disposition of the matter into the corresponding uniform offense
314 report.

315 (14) Assault upon any of the following listed persons is an
316 aggravating circumstance for charging under subsections (1)(b) and
317 (2)(b) of this section:

318 (a) When acting within the scope of his duty, office or
319 employment at the time of the assault: a statewide elected
320 official; law enforcement officer; fireman; emergency medical



321 personnel; public health personnel; social worker, family
322 protection specialist or family protection worker employed by the
323 Department of Human Services or another agency; Division of Youth
324 Services personnel; any county or municipal jail officer;
325 superintendent, principal, teacher or other instructional
326 personnel, school attendance officer or school bus driver; any
327 member of the Mississippi National Guard or United States Armed
328 Forces; a judge of a circuit, chancery, county, justice, municipal
329 or youth court or a judge of the Court of Appeals or a justice of
330 the Supreme Court; district attorney or legal assistant to a
331 district attorney; county prosecutor or municipal prosecutor;
332 court reporter employed by a court, court administrator, clerk or
333 deputy clerk of the court; public defender; or utility worker;

334 (b) A legislator while the Legislature is in regular or
335 extraordinary session or while otherwise acting within the scope
336 of his duty, office or employment; or

337 (c) A person who is sixty-five (65) years of age or
338 older or a person who is a vulnerable person, as defined in
339 Section 43-47-5.

340 **SECTION 7.** This act shall take effect and be in force from
341 and after July 1, 2019.

